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10.579.01

April 1, 2016

Via Certified Mail

Germon G. Medeiros
Sonoma Soil Builders, LLC
5900 Pruitt Avenue, Suite 160
Windsor, CA 95492

Re: Third Supplemental 60-Day Notice of Violations and Intent to Sue under the Federal Clean Water Act

Dear Mr. Medeiros:

The California Environmental Protection Association ("CEPA") provides this Third Supplemental 60-Day Notice of Violations and Intent to Sue under the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.* ("Notice") to you as the responsible owner, officer, operator or manager of Sonoma Soil Builders, LLC ("Discharger"). This Notice supplements the Second Supplemental Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act (Clean Water Act) that CEPA served on you by Certified Mail on November 15, 2015. CEPA is informed, and based on such information believes, that violations of the CWA are occurring at the facility operated by the Discharger, Sonoma Soil Builders, LLC, and located at 5900 Pruitt Avenue, Suite 160, in Windsor, California (WDID 1 491025096) ("the Facility" or "the site"). Pursuant to CWA § 505(b) (33 U.S.C. § 1365(a)), this Notice is being sent to you and the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California North Coast Regional Water Quality Control Board ("RWQCB").

CEPA is a Sonoma County-based environmental membership organization incorporated under the laws of the State of California. Its members work to protect, enhance, and assist in the restoration of rivers, creeks, streams, wetlands, vernal pools, and their tributaries located in California. Members of CEPA reside and work near the Laguna de Santa Rosa and Russian River, and use those waters and their watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and scientific study. Their use and enjoyment of these natural resources are specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Pool Creek, a tributary of the Russian River which is listed as impaired for sediment, temperature, and bacteria under CWA § 303(d).

You, as the Discharger, are hereby notified that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA intends to file suit in the United States District Court against the Discharger for continuing violations of the effluent standards and limitations, National Pollutant Discharge Elimination System ("NPDES") permit conditions and requirements, and Federal or State Orders issued under the CWA described below. These violations are contrary to CWA §§ 301(a), 402(p), and 505(a)(1)), as well as the requirements of Title 40 of the Code of Federal Regulations and the RWQCB Water Quality Control Plan (or "Basin Plan") as further detailed below.

VIOLATIONS OF THE CLEAN WATER ACT

The Discharger has been causing violations of the Clean Water Act for years, including discharges without an NPDES permit. Although the Discharger finally secured a General Permit in October 2014, it has since then committed numerous violations of its permit, many of which are continuing. The range of dates covered by this Supplemental Notice is from the Discharger's first known violation on April 20, 2013 through March 31, 2016. CEPA may further update this Supplemental Notice to include violations occurring after March 31, 2016. The Discharger's failure to comply with the terms of the applicable General Permits are continuous in nature. Each day that the Discharger is not compliant constitutes a separate violation.

Annual Reports

The Discharger has failed to file an adequate annual report for the 2014-2015 reporting period with the North Coast Regional Water Quality Control Board as required by Section B.14 of the 1997 General Permit (Order No. 97-03-DWQ). Despite Section B.14's requirements that an annual report include a "summary of visual observations and sampling results, and evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report . . . , an explanation of why a facility did not implement any activities required by the General Permit . . . , and records specified in Section B.13.i," the Discharger has provided *none* of this information to the North Coast Regional Water Quality Control Board. The failure to comply with this requirement constitutes a violation of the Clean Water Act. *See* 1997 General Permit, Section C.

Monitoring

The Discharger has failed to conduct the required monitoring consistent with the requirements of sections B.4 and B.5 of the 1997 General Permit and section XI.B of the current General Permit (Order No. 2014-0057-DWQ) ("GP").

The 1997 General Permit required the Discharger to make monthly visual observations during the rainy season to document the presence of potential pollutants in waste discharges during storm events. Section B.4. Based on those observations, the Discharger was required to make changes to the Facility's Storm Water Pollution Prevention Plan ("SWPPP"). *Id.* The 1997 permit required facility operators to collect and report to the RWQCB storm water samples for the first storm event of the wet

season, as well as at least one other storm during the wet season. If the Discharger was unable to collect samples during the first storm event, the Discharger was required to sample and report to the RWQCB a different storm event, and explain in the Annual Report why the first event was not sampled. None of this information is on file with the North Coast Regional Water Quality Control Board.

The current GP requires samples from *each* drainage area at all discharge locations for each Qualifying Storm Event ("QSE") where sampling is performed. The Discharger must upload "all sampling and analytical results" to "SMARTS within 30 days of obtaining all results from each sampling event." GP § XI.B.11. In violation of these requirements, the Discharger has failed to consistently sample from all identified sampling locations. For example, no sample was collected from sampling location 2 ("S-2") during the November 2015 sampling period. The failure to comply with conditions of the GP "constitutes a violation of the Clean Water Act and the Water Code and is grounds for an enforcement action . . . ." GP § XXI.A.

Storm Water Pollution Prevention Plan

The Discharger's Storm Water Pollution Prevention Plan ("SWPPP") is deficient in several respects.

Site Maps

First, the SWPPP fails to accurately and consistently depict the Facility boundaries and structural control measures as implemented. *See* GP § X.E; GP Attachment D, p. 4 (both address site map requirements). Instead, the SWPPP site-map provides inconsistent and contradictory information regarding the Facility boundaries. Further, the SWPPP site-map identifies structural control measures, such as K-rails, in locations different than where they are used at the Facility.

Potential Pollutant Sources

Second, the SWPPP fails to "describe[] the spill or leak prevention and response procedures" when discussing "each material handling and storage area." GP § X.G.1.b; SWPPP 13-14. Instead, it merely identifies the areas of the Facility where items are received, stored, mixed and re-stored. SWPPP 14. The SWPPP also fails to characterize "the dust or particulate pollutant[s]" that are generated by dust generating activities at the Facility. GP § X.G.1.c; SWPPP 13.

When assessing potential pollutant sources, the SWPPP fails to comport with the GP's minimum requirements. GP § X.G.2.a. For example, the SWPPP does not "identify the pollutants likely to be present in industrial storm water discharges and authorized NSWDs" (GP § X.G.2.a.ii), or "the degree to which the pollutants associated with [each industrial material] may be exposed to, and mobilized by contact with storm water" (GP § X.G.2.a.iv).

Minimum Best Management Practices

Third, the SWPPP fails to "identify *and describe*" the implemented best management practices ("BMPs") on which it relies to reduce the Facility's discharges. GP § X.C.1.b (emphasis added). The SWPPP must

> identify each BMP . . . including:
>
> i. The pollutant(s) the BMP is designed to reduce or prevent . . . ;
> ii. The frequency, time(s) of day, or conditions where the BMP is scheduled for implementation;
> iii. The locations within each area of industrial activity or industrial pollutant source where the BMP shall be implemented;
> iv. The individual and/or position responsible for implementing the BMP;
> v. The equipment and tools necessary to implement the BMP effectively; and,
> vi. The BMPs that may require more frequent visual observations beyond the monthly visual observations as described in Section XI.A.1.

GP § H.4.a. But the SWPPP does not do this. The only portion of the SWPPP that describes in detail the Facility's minimum BMPs is Table 5. It states only that "East drainage area: drain inlet pipes plugged and grates sealed with heavy mil plastic." Instead of detailing the other minimum BMPs, the SWPPP merely recites the General Permit's set minimum BMPs, without a description of *how* those BMPs are implemented at the Facility. It also does not specify whether it considers implementing any of the required BMPs to be infeasible. When discussing BMPs for good housekeeping, the SWPPP does not identify *what* the Facility's housekeeping needs are. Instead, it states that those needs have been identified. SWPPP 15. It does not identify how the Discharger cleans or disposes of leaked materials, or how it minimizes material tracking and dust generation. *Id.*

The SWPPP's treatment of other minimum BMPs suffers the same deficiencies. For example, the SWPPP does not identify which of its industrial materials the Facility considers to require containment as "non-solid industrial materials or wastes . . . that can be transported or dispersed by the wind or contact with storm water." SWPPP 15[1]; GP §§ X.H.1.a.vi (Good Housekeeping), X.H.1.d.iii (Material Handling and Waste Management). It fails to describe the observation and maintenance procedures developed to prevent equipment leaks and spills. GP § X.H.1.b. It also fails to describe the Facility's procedures to minimize spills and leaks. Instead it just asserts that such procedures exist. GP § X.H.1.c.i; SWPPP 16. It similarly does not describe "spill and leak response procedures to prevent industrial materials from discharging through the storm water conveyance system." (GP § X.H.1.c.iii)

[1] CEPA notes that the version of the SWPPP available on the SMARTS database is incorrectly paginated. Its first page of text is shown as page 10, not 1 as indicated in its Table of Contents.

Instead, it vaguely asserts that such "procedures have been developed and implemented." SWPPP 16. The SWPPP relies upon Tables 5 and 6 to identify and describe "all necessary and appropriate spill and leak response equipment, location(s) of spill and leak response equipment, and spill or leak response equipment maintenance procedures." SWPPP, p. 16. Neither Table 5 nor Table 6 of the SWPPP provides any detail about "spill and leak response equipment." Instead Table 6 merely states that a kit exists, and that it is inventoried and replenished. The inventory of this kit is not identified and described.

The SWPPP erroneously asserts that the Facility lacks "erodible surfaces" and, based on this false premise, does not include any BMPs to address erosion, including wind erosion. SWPPP 17. Yet the Facility "blends soils and additives for custom soil blends and sands for a variety of agricultural and construction applications" (SWPPP 10), and does so by storing large quantities of soil and soil components in piles outside, where they are exposed to wind and rain. While these soil piles are placed on top of a paved surface, they are still subject to "the process by which soil particles are detached and transported by the actions of wind, water or gravity" (GP, Attachment C, p. 3 defining "Erosion"). As such, the SWPPP must include BMPs that address this source of sediment pollution. GP § X.H.1.e.

While the SWPPP states that good housekeeping, preventative maintenance, material handling and waste management, exposure minimization, spill and leak prevention and response, employee training, and quality assurance and recordkeeping will be implemented as BMPs for the Facility's pollution sources, this statement does not expand on what those activities entail. *See* SWPPP Table 4. For all these reasons, the SWPPP's presentation of the Facility's minimum BMPs fails to "identify and describe" the minimum BMPs which are supposed to reduce the Facility's discharges, in violation of the GP.

Advanced Best Management Practices

Fourth, the SWPPP's advanced BMPs do not comply. Just as with minimum BMPs, the SWPPP must "identify and describe . . . any advanced BMPs . . . implemented to reduce or prevent pollutants in industrial storm water discharges and authorized NSWDs." GP §§ X.C.1.b (quote), H.4.a (detailed requirements). The SWPPP states that any advanced BMPs will be described in Appendix 4. SWPPP 18. Appendix 4, addressing exposure minimization BMPs, states that "storm resistant shelters . . . have been implemented to prevent the contact of storm water with the identified industrial materials or areas of industrial activity to the extent feasible." *See also* GP § X.G.2.b.i (storm resistant shelters). The SWPPP does not explain what circumstances would render this BMP infeasible (for example, by type of material, or location at the Facility). It also does not identify the areas of the Facility where the Discharger is implementing the advanced BMP, whether it is utilizing temporary or permanent shelters, or which industrial materials and/or activities it intends to shelter. Nor does it discuss procedures for implementing or maintaining the storm resistant shelters. Thus it does not describe the BMP as required. GP §§ X.C.1.b, H.4.a.

Relatedly, the SWPPP does not identify areas of the facility where BMPs "will not adequately reduce or prevent pollutants in storm water discharges," which normally would come before the implementation of advanced BMPs. GP §§ X.G.2.b; X.H.2.a. Were the SWPPP to identify the areas where minimum BMPs are inadequate, then one could at least assume that this advanced BMP would be implemented in those areas.

Appendix 4 also mentions three other types of advanced BMPs: storm water containment and discharge reduction BMPs, treatment control BMPs and other advanced BMPs. The SWPPP does not make clear whether the Discharger has implemented any of these advanced BMPs, and if so, by what means. If the Discharger has implemented these other BMPs, they must be identified and described in the SWPPP, and the Discharger's failure to do so violates the GP. GP § X.C.1.b.

Inconsistent Statements

Fifth, the SWPPP contains multiple inconsistent statements. For example, it identifies non-storm water discharges as a likely source of pollutants (SWPPP Table 4, Mixing Station), yet it also states that the Facility has "no authorized non-storm water discharges" and "no unauthorized non-storm water discharges (SWPPP 14). It likewise states that K-rails will be used as containment structures (SWPPP Table 4), and that the Facility will not use structural controls (SWPPP 12). Further, Appendix 4 implies that the Discharger has implemented unidentified storm water containment BMPs. These contradictory statements indicate that at least some parts of the SWPPP are inaccurate.

In addition, the SWPPP's discussion of spill response refers to both Table 6 and Table 5, but it is unclear whether one reference is in error, as Table 5 appears to be missing data. SWPPP 16. Likewise, the SWPPP's description of BMPs refers to both Table 5 and Table 4. SWPPP 18.

Missing and Incomplete Information

The SWPPP contains numerous formatting errors that prevent the SWPPP from imparting the information it purports to convey. First, the SWPPP contains multiple paragraphs that end mid-sentence. *E.g.* SWPPP 17 (ends with "visual observations and monitoring") 18 (ends with "will be identified and"), 19 (ends with "of the significant"), Appendix 2 (ends with "human health or the"), Appendix 3 at Monthly Visual Observations, 3.b.4 (ends with "applied in accordance with the"), 3.c.3.i ("potential sources of"), 3.c.3.ii ("volume of authorized"), Appendix 3 at Exceedance Response Action 2.b.1 ("maximum NAL values in"), Appendix 3 at Annual Comprehensive Facility Compliance Evaluation 2 ("documentation of the justification for"). Second, as noted above, Table 5 appears to be missing significant data. It describes only *one* implemented BMP, but includes six implementation schedules. Given that Table 4 refers to additional BMPs, and Appendix 4 also refers to additional BMPs, Table 5 should include the detailed implementation schedule for these other BMPs.

Failure to Implement Feasible Actions to Reduce Exceedances

CEPA is informed and believes that the inadequate and ill-defined BMPs discussed above have not sufficiently reduced or prevented discharges of pollutants from the Facility. The Discharger has failed to identify and implement BMPs that comply with the requirements of the General Permit for best conventional pollutant control technology ("BCT") for conventional pollutants, and best available technology economically achievable ("BAT") for toxic and non-conventional pollutants. These technology based pollution controls are supposed to be implemented in a manner that reflects best industry practice considering technological availability and economic practicability and achievability. See GP §§ I.C, V.A. The Discharger's failure to do so has resulted in continued elevated contaminant levels in the Discharger's storm water. The Discharger's levels of total suspended solids, as sampled at the Facility's S2 sampling location on December 18, 2015, were 1300 mg/L. This amount is far above the numerical action levels ("NALs") set for total suspended solids: 400 mg/L instantaneous maximum NAL, and 100 mg/L annual NAL. While so-called instantaneous NALs are not exceeded until "two or more analytical results from samples taken for any parameter within a reporting year exceed the instantaneous maximum NAL value," the amount of the Facility's exceedances indicate that it is contributing sediment and other pollutants to the already impaired Russian River through its storm water discharges.

Likewise, the December 18, 2015, S2 samples for iron (51 mg/L), zinc (0.72 mg/L), and nitrate + nitrite nitrogen (2.1 mg/L) all exceeded the annual NALs for those pollutants. The annual NAL for iron is 1.0 mg/L, zinc is 0.26 mg/L, and nitrate + nitrite nitrogen is 0.68 mg/L. *See* GP § XI.B, Table 2. The S1 samples also exceeded the annual NAL for iron, at 1.8 mg/L. These sampling results illustrate the need for the Facility to take additional steps to reduce its contaminated storm water discharges.

CONTACT INFORMATION

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Alternatively, CEPA can be contacted through its President, Gerard Duenas, at:

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CONCLUSION

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law. The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Laguna de Santa Rosa and the Russian River and their watershed.

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding these violations so that discussions may be completed before the end of the 60-day notice period.

Very truly yours,

Stephan C. Volker
Attorney for California Environmental Protection Association

SCV:taf

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